**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2733 of 2001**
**With**
**CIVIL APPLICATION No. 8515 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
**and**
**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MAGANBHAI JETHABHAI MAKWANA & 2 - Appellant(s)**
**Versus**
**VANAJI MATHURJI THAKORE (DRIVER) & 3 - Defendant(s)**

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**Appearance :**
MR ASHUTOSH R BHATT for Appellant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 1 - 2.
MS SONAL D VYAS for Defendant(s) : 3,
MR PV NANAVATI for Defendant(s) : 4,
MR VIBHUTI NANAVATI for Defendant(s) : 4,
MR SUNIL B PARIKH for Defendant(s) : 4,

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 19/02/2007**
**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

This appeal has been filed by the original claimants challenging a judgment and award dated 1.10.1999 passed by the Motor Accident Claims Tribunal, (Main), Ahmedabad (Rural), in MAC Petition No.1212 of 1992.

2. One Jethabhai Makwana was travelling in a tractor with a trolly attached thereto on 6.7.1992 as a labourer. The vehicle met with an accident when the tractor being driven by the driver in a rash manner threw the deceased off the tractor in which he received fatal injuries. The claimants, who included the widow of the deceased as well as the children, therefore, filed the above-mentioned claim petition seeking compensation of Rs.2,70,000/- from the driver and owner of the tractor as well as from the Insurance Companies which had separately insured the tractor as well as the trolly.

3. The Claims Tribunal had no hesitation in coming to the conclusion that the accident arose on account of rash and negligent driving of the tractor.

With respect to the compensation, the Tribunal came to the conclusion that the monthly income of the deceased can be assessed at Rs.1500/-, one-third thereof was deducted for personal

expenditure of the deceased, leaving apart Rs.1,000/- for the benefit of the family. The Tribunal adopted the multiplier of 12 and worked out the total compensation of Rs.1,54,000/- by adding Rs.10,000/- towards loss of expectation of life.

4. With respect to the liability of the Insurance Companies which had insured the tractor as well as the trolly, the Tribunal came to the conclusion that the deceased was travelling on the tractor. The Insurance Company of the trolly, therefore, would have no liability to satisfy the award. With respect to the liability of the United India Insurance Company, alleged insurer of the tractor, the Tribunal came to the conclusion that there is no evidence led on record to establish that the tractor was duly insured by the said Insurance Company. Significantly, though the claimants had produced a cover-note before the Claims Tribunal, the officers of the Insurance Company had gone on record suggesting that there is no subsisting insurance of the tractor. Since the claimants were unable to produce the original of the insurance policy, the Insurance Company was absolved of its liability of satisfying the award.

5. It is this award which the claimants have challenged before us in the present First Appeal primarily challenging the conclusion of the Tribunal by which respondent No.3 herein i.e. United India Insurance Co. has been absolved of its liability to

satisfy the award.

6. During pendency of this First Appeal, the claimants have filed Civil Application No.8515 of 2006 through which they seek to produce additional document on record. The additional document in question is a copy of the policy of United India Insurance Company insuring the tractor involved in the accident and the insurance, according to the policy, was subsisting on the date of the accident.

7. Learned advocate Ms Sonal D Vyas appearing for respondent No.3-Insurance Company had sought and was granted time on previous occasions to verify the existence of the Insurance Policy sought to be produced by the claimants on record. Today before us she stated, under instructions, that in fact the policy was issued by respondent No.3-Insurance Company insuring the tractor for the relevant period when the accident took place. In that view of the matter, we find no difficulty in granting Civil Application No.8515 of 2006 permitting the claimants to produce additional document on record. The same is taken on record.

8. In view of this development, learned advocate Shri Ashutosh Bhatt appearing for the appellants submitted that the Claims Tribunal erred in absolving the Insurance company from its liability to satisfy the award. He submitted that from the very beginning the case of the claimants has

been that the deceased was travelling as a labourer on the tractor and that the tractor was duly insured by respondent No.3-Insurance Company. He, therefore, submitted that the impugned judgment and award to the extent the same absolves respondent No.3-Insurance Company needs to be set aside.

9. On the other hand, Ms Sonal Vyas appearing for respondent No.3- Insurance Company, though as noted above, conceded that the tractor was duly insured by respondent No.3 at the relevant time, submitted that its defence that the deceased was a gratuitous passenger and that, therefore, there was a breach of the terms of the policy of insurance needs to be examined by the Claims Tribunal, for which purpose, the entire proceedings should be remanded to the Claims Tribunal.

10. Having heard the learned advocates appearing for the parties, we may note that the accident which took place in the year 1992 has not yet resulted into any compensation being paid to the claimants till date. Though the claimants had produced before the Claims Tribunal a cover-note indicating that the tractor involved in the accident was insured by respondent No.3-Insurance Company, without full verification, a denial was made by the Insurance Company before the Claims Tribunal. The officials of the Claims Tribunal went on record to suggest that no insurance policy was issued in favour of the owner of the tractor. Before us also, the First Appeal was

filed in the year 2001 and remained dormant till it was taken up by us for final hearing. Till then respondent No.3-Insurance Company made no efforts to make amends for a factual error made before the Claims Tribunal. It was only when the claimants took extra trouble and unearthed the insurance policy and produced the same before us along with the civil application that respondent No.3 – Insurance Company mobilized itself and searched the record. Even for such a purpose, on several occasions the appeal had to be adjourned. Eventually, however, the Insurance Company submitted that the insurance was in fact issued.

11. Considering all these aspects of the matter, we find it most inequitable to remand the proceedings at this distant point of time. Remand would work harshly against the claimants who lost the only bread-winner some 17 years back.

12. Even otherwise, we have no difficulty in turning down the defence of respondent No.3-Insurance Company. From the outset, the case of the claimants has been that the deceased was travelling on the tractor as a labourer. In fact the complaint lodged by the driver of the tractor immediately after the accident also records that the deceased was travelling on the tractor as a labourer for carrying the earth removed from one place to another.

13. No serious challenge has been made by the

Insurance Company to these factual aspects brought on record. At this distant point of time, it would neither be necessary nor appropriate to remand the proceedings only for this limited purpose.

14. We have also perused the insurance policy. The limitations of the use of the vehicle insured clearly provides as follows :-

> “3. Use for carrying passengers in the vehicle except employees (other than the driver) not exceeding six in number coming under the purview of Workmen's Compensation Act, 1923.”

This also would be sufficient to turn down the contention of the Insurance Company.

15. The Claims Tribunal has awarded a modest sum for death of a sole bread-winner of the family and, in all, awarded relatively a modest sum of Rs.1,54,000/- for the death of an able-bodied person upon whom three heirs depended. Considering all these aspects of the matter, we have no hesitation in setting aside the conclusion of the Tribunal insofar as the same absolves respondent No.3-Insurance Company from its liability to satisfy the award.

16. In the result, the appeal is allowed by holding that respondent No.3- United India Insurance Co. Ltd. is also jointly and severally along with respondent Nos.1 and 2 liable to satisfy the award of compensation of Rs.1,54,000/-, as directed by the

Claims Tribunal, along with rate of interest of 12% per annum as granted by the Tribunal, which we hereby confirm. The appeal is allowed with costs, which is quantified at Rs.10,000/- (Rupees ten thousand).

Respondent No.3-United India Insurance Co. Ltd. shall deposit the entire amount of compensation awarded by the Claims Tribunal along with the interest as provided, as also the costs of this appeal, before the Claims Tribunal latest by 31st March 2007.

Upon such deposit, the Claims Tribunal shall disburse 20% of the amount deposited in favour of appellant No.2 (widow of the deceased). The remaining amount shall be invested in fixed deposit with a nationalized bank near the residence of the claimants for a period of three years with the usual conditions about prohibition against premature encashment of/ encumbrance over the deposit, with permission to appellant No.2 (widow of the deceased) to withdraw the interest periodically accruing on such fixed deposit and with a direction to the Bank that the bank accounts of the claimants shall not be permitted to be operated by any power of attorney holder who is not a close relative of the claimants.

17. Civil Application No.8515 of 2006 is also allowed and disposed of as observed in the earlier part of the judgment.

(M.S. SHAH, J.) (AKIL KURESHI, J.)

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